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RIGHTS OF THE CHILD

Sale of children, child prostitution and child pornography

Report submitted by Mr. Vitit Muntarbhorn, Special Rapporteur, in accordance with Commission on Human Rights resolution 1993/82

Addendum

Visit by the Special Rapporteur to Nepal

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Introduction

1. From 1 to 13 June 1993, the Special Rapporteur on the Sale of Children paid a visit to Nepal at the invitation of the Government. During the visit, he met with both governmental officials and representatives of non-governmental sectors. He also had various talks with children, and made field trips to Kathmandu, Biratnagar, Jhapa, Sindhupalchowk, Nuwakot and Nepalganj. The Special Rapporteur thanks warmly the Government of Nepal and all those whom he met during the visit for the hospitality, the open and frank discussions, and the information provided. He had free access to all the sectors of the community that he had requested to meet.

2. Particular attention was paid to the issue of the sale of children, including sale for adoptions, child labour exploitation, sale of organs, and child prostitution and child pornography. Information on these questions was supplemented during the visit by many field interviews. As a whole, the experience was very constructive, and it is hoped that the recommendations at the end of this report will assist both the Nepalese Government and the Nepalese people to mobilize effective and expeditious action to address the questions of concern to this mandate. At the outset, two difficulties encountered in the preparation of this report should be borne in mind. First, in view of the short time available for the visit, some of the information collected was not as extensive as desired. Second, much of the literature on the subject is in Nepali, and is therefore less accessible for the purposes of this report.

Overview

3. Nepal is a landlocked country of nearly 19 million people, 90 per cent of whom are based in rural areas. 1/ The country is part of the Himalaya mountain system and can be divided into three areas: the mountainous region, the hilly region, and the lowlands or Tarai. There are numerous ethnic groups, including indigenous communities such as the Tamangs in the mountainous areas and the Tharus in the lowlands. Hinduism is the prevalent religion in the country. After a long period of absolutist rule, the country adopted a democratic system in 1990. The country's monarchic system became a constitutional monarchy.

4. The country has much rugged terrain, and is bordered by India, Bhutan and China. Poverty is rampant, and Nepal is classified as one of the least developed countries. According to a recent report of the United Nations Development Programme over half of the population live below absolute poverty and more than 90 per cent are still dependent on the agricultural sector, which accounts for about 60 per cent of the total GDP. 2/

5. In the UNDP Human Development Report, 1993 Nepal is placed 152 out of 173 countries in terms of ranking for the human development index which is based upon measurement of life expectancy, literacy and real GDP per capita. 3/ There is great inequality, as seen in the distorted landholdings. According to the Gini coefficient used by the United Nations to measure such inequality (ranging from zero to 1; the closer the value to 1, the greater the

inequality), the measurement is set at 0.60, thereby indicating high inequality. 4/ The general situation is encapsulated as follows:

> "The adult literacy rate of 40% is among the lowest in Asia. Gender disparity is severe. The female literacy rate (20%) is only 1/3 of its male counterpart. Life expectancy for females (53 years) is lower than that for males (55 years) ... The Human Development Report shows wide rural and urban gaps in all socio-economic spheres ... Since the country's per capita income is also stagnant, it is clear that the key indicators of the Human Development Index are moving at a sluggish pace." 5/

6. The national authorities admit that poverty seems to be worsening among certain sectors of the community, and is compounded by a high population growth rate:

> "Nepal, with a per capita of USD 179 is one of the poorest countries in the world. Even more appalling is the fact that the number of poor is growing steadily. The rate of impoverishment has grown from 42.6% of the population below absolute poverty (failing to meet the minimum consumption level of 2,250 calories) in 1984/5 to an estimated 49% in 1992/3." 6/

7. The poverty factor and socio-economic deprivations take a heavy toll among families and children. They are often the root causes of breakdown and break-up of families, as a consequence of which children are driven into a variety of exploitative situations. This is aggravated by a national history steeped in paternalism, absolutist rule and negative socio-cultural traditions such as the caste system. Although there was reversion to democratic rule in 1990, the consequences of an oppressive past persist today.

8. Current estimates suggest that children between 0 and 14 years of age constitute 42 per cent of the total population, and girls number 48 per cent of the total child population. 7/ In 1988 there were some 3.8 million girl children.

9. A particular concern is gender discrimination, which has great impact on the girl child. Girls have less access to the basic necessities, such as healthcare and education. Nepal is also one of the few countries in the world where the mortality rate of children under five is higher among girls than boys (higher by 5 per cent). 8/ Girls are also more exploited, as is indicated by the following observation:

> "The practices of dowry bride price and different marriage customs have an effect on the social status of the girl child in different ethnic communities. The socialization of girl children is affected by concerns about sexual purity and the necessity to arrange marriages. Until married, the girl child is often seen as an economic burden ... Nepal reportedly has one of the highest indices of son preference in the world. There is rejoicing in the birth of a son and unhappiness at the arrival of a daughter ... The low social value of the girl is sometimes reflected in extreme forms in the trafficking of girls. Girls are sold for profit into prostitution ... Advocates for the girl child often

observe that the older women of the household are instrumental in perpetuating discriminatory attitudes concerning women's values, abilities and proper roles. In view of this allegedly ironic fact, they suggest that women should be educated so that they will stop denigrating themselves and instil a positive self-image in the minds of their daughters." 9/

10. The situation is compounded by the vestiges of slavery, although it was abolished long ago. They are manifested in the existing bonded labour system (the Kamaiya system), whereby families are held in a perpetual cycle of indebtedness to their landlords and have to pay back loans through their labour, including child labour, in an exploitive setting.

11. Beyond the scenario of poverty and social injustices, it should be noted that there are many criminal elements at work abusing and profiteering from children. This is particularly evident in the extensive sale and trafficking of children both within Nepal and across its frontiers. It is apparent that the trafficking of Nepalese children into India is widespread. This is partly due to the open border between the two countries, which calls for closer monitoring in future.

Laws/policies/practices

12. At the international level, Nepal has participated in the formulation of a variety of international human rights instruments which have an impact on children, and is a party to a number of them. These include the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, the 1979 Convention on the Elimination of All Forms of Discrimination against Women and, most significantly, the 1989 Convention on the Rights of the Child. In addition, it is a party to the 1926 Slavery Convention, the 1953 Protocol amending the Slavery Convention, and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery. Under all these instruments the sale and trafficking of children are illegal, and Nepal thus has an obligation to take effective action to counter these malpractices.

13. The Convention on the Rights of the Child has provisions against sale for adoptions, child labour exploitation, child prostitution, child pornography, and a variety of other problems linked with the sale and trafficking of children. Under this Convention, Nepal is obliged to report periodically to the Committee on the Rights of the Child, which monitors State compliance with the Convention. Nepal's first report is already due and is eagerly awaited, as it will be a means of monitoring the national and local situation more closely. As a complement to this, Nepal has signed the UNICEF-supported World Declaration on the Survival, Protection and Development of Children, adopted by the World Summit for Children in September 1990, which has a specific timeframe for the realization of a programme of action for children.

14. At the regional level, Nepal's commitment on children's issues is evident in the context of the South Asian Association for Regional Cooperation (SAARC). Of particular relevance is the 1992 Colombo Resolution on Children

adopted by SAARC, in which all the countries of this forum committed themselves to a national plan of action to implement the 1990 World Declaration, stating:

> "The unacceptable health, nutritional, educational and social conditions for a large proportion of children and their exposure to abuse, violence and environmental hazards, and assumption of adult responsibilities, like motherhood at a tender age and child labour, and child trafficking are some of the most urgent challenges in the region. Child trafficking particularly urgently calls for both bilateral as well as regional cooperation." 10/

SAARC aims, in particular, to raise more resources for human development and the reduction of poverty, to respond to children's needs and to devolve power to the local level. The action proposed includes greater access to education, with special attention to the girl child, a higher age of marriage for girls, reduction of gender disparities and the elimination of child labour. Such action is reinforced by the SAARC Decade on the Girl Child.

15. At the national level, after a long period of unrepresentative and absolutist rule, a new Constitution was passed in 1990. It expressly prohibits the sale and trafficking of persons:

> "Article 20:
>
> 1. Traffic in human beings, slavery, serfdom or forced labour in any form is prohibited. Any contravention of this provision shall be punishable by law ...
>
> 2. No minor shall be employed to work in any factory or mine, or be engaged in any other hazardous work."

16. The Constitution is supplemented by a variety of specific laws, some of which preceded the Constitution itself. Of particular relevance is the Legal Code or Muluki Ain, which originated in the nineteenth century and which has been amended many times since. It has a variety of provisions against child exploitation. For example, it forbids the enslavement and sale of any person. It prohibits the separation of minors (defined as those under 16 years of age) from their legal guardian without the latter's consent, as well as the marriage of girls under 16 years of age. It imposes various conditions in regard to adoptions. Intercourse with a child under 14 years of age is considered to be rape, whether or not the child consents.

17. In 1986, the Traffic in Human Beings (Control) Act was passed to counter the sale and trafficking of persons, including children. The Act applies extraterritorially as follows:

> "2. Even if any person has committed any offence punishable under this Act outside the Kingdom of Nepal, he shall be prosecuted and punished under this Act as if he had done so within the Kingdom of Nepal."

18. Traffic in humans covers the following situations:

"4. (a) To sell human beings with any motive;

(b) To take any person abroad with intent of sale;

(c) To compel any woman to take to prostitution through allurement or enticement, deceit, threats, intimidation, pressures or otherwise;

(d) To hatch a conspiracy for committing any of the acts mentioned ..."

19. Interestingly, the Act also reverses the burden of proof. In the case of an allegation concerning trafficking of women for prostitution, the burden lies on the accused to disprove the allegation.

20. In 1992, a new Labour Act was passed with more concrete provisions to counter child labour exploitation, replacing an earlier factory law. Under the new Act, a "child" is defined as a person under 14 years of age, while a "minor" is defined as a person between 14 and 18 years of age. Employment of under-14-year-olds is prohibited, while the work of minors is regulated; they can only be employed between 6 a.m. and 6 p.m.

21. The most recent addition to the legislative framework is the 1992 Children's Act. A "child" is defined as a person under 16 years of age. The Act prohibits discrimination between daughters and sons, and allows adopted children to make contact with their natural parents. It forbids the use of children for begging and the offering of children in the name of a god or goddess. To counter sexual and other exploitation, section 15 provides as follows:

"1. No person shall involve or use a child in an immoral profession.

2. No photograph of a child shall be taken or be allowed to be taken, nor shall such photograph be distributed or exhibited for the purpose of engaging a child in an immoral profession.

3. No publication, exhibition or distribution of photograph or personal events or descriptions of a child tarnishing the character of such child shall be made.

4. No child shall be involved in the sale or distribution of, and trafficking in alcoholic drinks, narcotic drugs or any other drugs."

22. The law on child labour is also reinforced by the Children's Act, which has a provision against employment of those under 14 years of age, while employment of those between 14 and 16 is strictly regulated. Section 17 provides for equal remuneration for child labourers without discrimination, and for their protection from hazardous work. A supervisory central/district board is also provided for under the Act.

23. Apart from the of statutes noted, the 8th National Development Plan (1992-1997) has an impact on children's development. It establishes as a priority poverty alleviation and child development, including free primary education, health facilities, children in difficulties and the cooperation of the non-governmental sector. 13/ In addition, a national programme of action for children for the 1990s places emphasis on satisfying the needs of children in regard to health, nutrition, education, sanitation and poverty alleviation, and on countering the exploitation of children in difficulties.

24. While the legislative and policy framework to respond to children's rights are in place to some extent in Nepal, there is evidently poor implementation and weak enforcement at the national and local levels, which are aggravated by the following shortcomings:

(a) There is a difference between the national and international age criteria for childhood which may result in inconsistencies. While the Convention on the Rights of the Child establishes 18 as the threshold between childhood and adulthood, the new Children's Act has a lower threshold (principally 16).

(b) There are divergent age criteria in national laws. For example, the Labour Act regulates employment of those between 14 and 18, while the Children's Act regulates employment of those between 14 and 16.

(c) As many births are not registered, it is difficult to prove the age of children. Those without registration papers are likely to suffer a double disadvantage in claiming whatever benefits are available to children. This phenomenon particularly affects indigenous communities that live in outlying areas.

(d) The laws and policies are weak on preventive action, especially to prevent poverty and family disintegration. The issues of social security, family subsidies, social justice and equity have for too long been dormant. Reallocation of resources such as land is also tardy, and to date land redistribution has not been successful owing to impediment by vested interests and the ruling elite. Poverty and environmental degradation exert a continuing "push" factor compelling families to break up and migrate; in this setting, children become more susceptible to abuse, neglect and exploitation.

(e) Several laws, such as the Constitution, depend for their implementation upon various ministries and the bureaucracy. This means that, in effect, the rights inherent in such laws are not justiciable; it would be difficult to resort to courts to enforce them. In any case, in view of the physical and mental distance between the majority of the population, who are rural based and often illiterate, on the one hand, and the formal judicial structure, on the other hand, there is a wide gap between availability of legal remedies and genuine accessibility of those remedies.

(f) Law enforcement authorities are often weak, understaffed, undertrained and corrupt. Interestingly, during the Special Rapporteur's dialogue with the police, the latter complained that the labour laws did not clearly confer upon the police the power to raid illegal factories and that

this was within the mandate of labour inspectors. This type of obfuscation and "burden-shifting" does not bode well for law enforcement and child protection.

(g) Whatever laws and policies there are, there are also a vast array of exploitative traditions and beliefs which will not be eradicated overnight. These await broad-based community action and a socialization and educational process to change attitudes and cultures or "cultural disguises" which are inconsistent with international standards.

(h) There is an expansive web of criminality which exploits children and which abuses the open border with India. There is still insufficient transfrontier cooperation both to prevent child exploitation and to ensure safe return and rehabilitation of children subsequently.

25. The shortcomings are illustrated further when one turns more specifically to the different sectors of the sale of children.

I. SALE OF CHILDREN

26. Four areas are of concern to this mandate: sale for adoption, child labour exploitation, sale of organs and a residual category covering other forms of sale.

A. Sale for adoption

27. In many situations, adoption can have a positive effect in finding a family environment for children. However, at times it is abused and exploited by commercialization and traffickers.

28. Originally, local adoptions in Nepal were limited by tradition to male children. However, the Muluki Ain now provides for adoption of both male and female children. It provides a number of conditions to regulate adoptions, including the following:

> "3. No man who has a son of his own and no woman who has her husband living or who has a son of her own or her co-wife's can adopt a child. In case adoption is made, it shall be cancelled ...
>
> "4a. Any child who is below the age of 16 years and whose father is not alive or cannot be traced, may be adopted with the consent of the mother, if any, or else with the consent of the person who has brought it up."

29. In practice, Hindus tend to adopt only children of the same caste.

30. Foreigners can adopt Nepalese children under the Muluki Ain. However, there are now Home Ministry procedures regulating intercountry adoptions. Intercountry adoptions are only available to married couples, and the latter are not able to choose whether they adopt a boy or a girl. In practice, many girls have been adopted, as local placements of girls tends to be more difficult. Europe is a key destination. Basically, no foreign adoption agencies are allowed to function in Nepal, and the process has to be through

the governmental authorities only. This has been reinforced by the recent completion of the Hague Convention on Inter-Country Adoptions, which reinforces the safeguards protecting children in intercountry adoptions; Nepal is now a signatory to the Convention.

31. Despite these safeguards, it was clear during the Special Rapporteur's visit that some abuses take place in practice. At times intermediaries, such as lawyers, are at work to bypass the law, and money changes hands in the quest to expedite intercountry adoptions. This is in breach of the array of laws mentioned earlier, including the Muluki Ain, the Act against Human Trafficking and the Children's Act.

32. There is an evident divide between law and law enforcement, rendered more complicated by various local cultural traditions.

B. Child labour exploitation

33. This is a major issue in Nepal both quantitatively and qualitatively. Despite the existence of various laws to protect children, abuses are rampant and are found in a variety of areas, including the following:

"Agriculture:	Livestock tending, planting, harvesting, ploughing, fishing;
Cottage industry:	Pottery, carpet and cloth weaving, candle-making, thanka painting, poultry farming;
Manufacture:	Printing, bricks, bread, garments, matches, cigarettes, soap, shoes, plastics;
Plantation:	Tea, sugar cane, tobacco;
Domestic:	Caring for parents, servants;
Catering:	Hotels, tea shops, restaurants, bars;
Selling:	Streethawking, petrol pump attendant, shop assistant;
Manual labour:	Rock breaking, mechanic, sweeper, road and building site worker, carpenter;
Tourist and travel industry:	Portering, circus performer, rafting and trekking guide, bus conductor, rickshaw puller;
Other ways children earn money:	Ragpicking, prostitution, begging". 12/

34. A recent assessment analyses the situation as follows:

"A child in the 6 to 9 years age group works about 3 hours a day, and 5 to 6 hours in the 10 to 14 year age group, with girls working about twice as many hours as boys ... 16% of all human labour is devoted to

fuel and fodder collection alone, not counting carrying water. These chores are done by women and children, in addition to farming and grazing ... Although the law sets the minimum age of marriage at 16, studies suggest that 22% of girls are married by age 13 and 50% by age 16." 13/

35. During the Special Rapporteur's visit, field trips were made to various carpet and match-making factories where clearly the children were exploited and "disguised" as adults. Although many were under age, they had most probably been told by their elders to claim that they were older. Many had been sold or brought to the factories by their relatives and other intermediaries. The chain of exploitation is linked with an extensive sub-contracting system. A large number are from indigenous communities, thereby indicating that the children of indigenous peoples, such as the Tamangs, are exploited more than the children of other groups. This is exemplified by the grave situation of children in the carpet industry:

"It has been estimated that the number of children currently working in the carpet industry of Nepal is more than 150,000. The 1992 research of Child Workers in Nepal Concerned Centre (CWIN) shows that children constitute more than 50% of the total carpet work force.

"These children are in the age group 5-16, with 13 being the average age ... It is true that the preference for children in the carpet factories is due to their nimble fingers which can tie the tiniest knots on a very tight loom. But it is also true that the employers prefer children because they are naive, willing and easy to control and exploit ... It is easy for the naike (recruiter) to persuade parents to send their children to work in the carpet factory because it means not only extra income for the family, but also one less mouth to feed ... CWIN research shows that more than 80% are Tamangs, the people who live scattered throughout the country and are by nature a very sincere and naive race and are mostly illiterate." 14/

36. The Special Rapporteur also paid a visit to various indigenous peoples, such as the Tharus, who are bonded labourers. The system of bonded labour in question is known as the Kamaiya. Many, including young children, work on the land of their landlords, including tea plantations, to pay off loans (sauki). Although the new labour act now extends to tea plantations, it does not cover the Kamaiya system as a whole, and law enforcement is poor at the local level. The workers are often at the mercy of their landlords unless they can group together to vindicate their rights. Many of those with whom the Special Rapporteur talked wished to see the passage of a law to prohibit bonded labour.

37. Another group of children visible during the Special Rapporteur's visit was streetchildren. At times they are used as instruments of crime. Life on the streets is precarious for many reasons:

"The money they earn is all spent on eating, going to cinema, gambling and visiting 'Vattis' (where people sell wines). They always find it hard to save because of the trend of pickpocketing between themselves and also because of police who catch them sleeping on the pavements and rob them out of their pocket." 15/

38. By contrast, child domestic servants suffer behind closed doors, and this is at times linked with the bonded labour system:

> "Most of the children are unaware of their employment contract, especially when they have been employed through brokers. Brokers often cheat the parents as well as the child, keeping for themselves the bulk of the child's earnings ... Children employed as domestic workers are frequently abused. They are humiliated, beaten and even sexually abused." 16/

39. Girl children are exploited further in two situations; they are handed over to temples to become living "goddesses" and they are the subject of sale by marriage. The former practice is related to the Kumari system; girls are delivered to temples for this purpose but they must have a flawless body untainted by blood. When there is a loss of blood, such as menstruation, they have to leave the system. This practice keeps girls from attending school. There is also the belief that a man who marries an ex-Kumari dies young, thus adding to the gender discrimination. 17/

40. Sale by marriage is linked with the dowry system. Despite the law prohibiting marriage under 16 for girls, the local practice diverges from the law:

> "The practice of dowry and bride price encourage more child marriages. The high 'price' of adult husbands encourages parents to marry their young daughters to teenage boys who are 'cheaper'. This is in spite of the fact that the Social Reform Act 1966 prohibits dowry and bride price unless it is a custom of the community." 18/

41. There is much transfrontier trafficking of Nepalese children into India and (at times) of Indian children into Nepal, for a variety of reasons. Many are sold into the carpet-making industry. Others are trafficked into prostitution; this is dealt with below.

42. While there are several laws which can be used to protect children from child labour exploitation, they are not implemented effectively. Most directly relevant are the Labour Act and the Children's Act. The former leaves it too much to the discretion of labour inspectors to decide whether to raid illegal factories. Their role is passive rather than proactive; they are not obliged to inspect premises regularly, but await complaints. Given the breadth of the problem, it is insufficient to rely upon them. The community at large, including the police, should be mobilized to assist in such law enforcement. Yet, as noted above, the police are unclear as to whether they should assist in the law enforcement process on this issue.

43. The law is also lacking in that it covers the formal rather than the informal sector. Domestic service seems to be a case in point and a legislative loophole. However, even with a legislative framework and good law enforcement personnel, a long-term challenge is how to overcome age-old traditions and practices which are detrimental to children's rights, especially those of the girl child. An integrated approach based upon

community mobilization, socialization and education to change values and nurture a response to international standards is a necessary complement to the legislative framework.

C. Sale of organs

44. There is no specific law regulating organ transplants in Nepal. However, the sale of children's organs is clearly contrary to the spirit of various existing laws. These include the Muluki Ain, the Act concerning Human Trafficking, and the Children's Act.

45. During the Special Rapporteur's visit, several sources, including the police, expressed concern on the issue. They indicated that there was trafficking of children to India for the purpose of sale of organs. High ranking police sources informed the Special Rapporteur of a 1993 case concerning a child and an adolescent kidnapped from Nepal and taken into India. As reported, the kidnapper was from Bihar. The case concerned trafficking with the intention of extracting their kidneys. The young persons were saved as the result of cooperation between border authorities, and they were brought back to Nepal.

46. This case indicates the actual and potential threat to children, in breach of both local and international law. Cross-frontier cooperation between concerned authorities to apprehend criminals in this regard is essential. A requirement for the future is to identify the market of customers and to counter not only the supply but also the demand factor.

D. Other forms of sale

47. The Special Rapporteur did not find the issue of child soldiers to be a significant problem in Nepal. However, numerous abductions and disappearances of children give rise to major concerns. These are linked with both child labour exploitation and sale for sexual purposes, discussed below. Although they are obviously in breach of the range of laws noted earlier, the practices are pervasive: there is much trafficking of Nepalese children, especially the children of indigenous communities in Nepal, both locally and into neighbouring India.

II. CHILD PROSTITUTION

48. Victimization of children through prostitution takes manifold forms. It ranges from traditional practices which exploit children sexually to more modern forms of sexual exploitation.

49. Examples of such traditional practices include the deuki system and the practices of the Badi community. In the deuki system, girls are offered to temples to become goddesses or "married to God"; they then fall prey to sexual practices and ultimately prostitution. One commentator has observed that the cultural disguise for prostitution affects generations of women and their girl children as follows:

> "Behind the guise of religiosity of the deuki tradition lie other mechanisms that add a completely different dimension to the deuki

> identity. The daughters of deukis are either offered by their parents or sold to others who want to offer a gift to the deities ... When the girls are offered to the deities, a lump sum or a piece of land is sometimes given for the livelihood of the deuki. However, girls who become deuki at a very young age are not even aware of such a source of income given to them, and in any case, the source of income is not enough for their survival. Besides the economic constraint, the common belief that no one should marry deukis prevents deuki women from depending on marriage as a refuge ... The irony of this institution lies in the dual process whereby deukis hold the venerated ritual status as affiliates of deities on the one hand, while being forced to sell their bodies for their survival on the other. The children of deukis are usually taken care of by their mothers. They cannot obtain citizenship because of the absence of a legal father ... The environment they grow up in and the socio-economic circumstances make the daughters of deukis develop a tendency to follow their mother's profession." 19/

Although the practice has now been outlawed by the Children's Act, it persists in the country.

50. The Badi community has resorted to prostitution in recent times, although they were entertainers in the past. The situation is described as follows:

> "It is alarming to realise that Badis as a people have been associated with prostitution as if this were their caste occupation. The traditional Badi profession as entertainers has been distorted conveniently to legitimise prostitution as a cultural practice of the Badis. Using the guise of culture, such interpretation not only justifies prostitution but also makes room for others to take advantage of it. The involvement of the police and the administration in the flesh trade has been disclosed through innumerable stories in the media." 20/

51. The Special Rapporteur held discussions with the Badi community and visited various sites where educational facilities are being provided to create alternative livelihood and income. Although child prostitution among this community (as elsewhere) is illegal under the Law on Human Trafficking or the Children's Act, more than legislative strictures are required so as to provide other livelihood options.

52. On another front, there are more modern practices of child prostitution. These are highlighted by the vast number of women and children tricked and sold into prostitution both in Nepal and into neighbouring India. During the Special Rapporteur's visit to the hill areas, he met two young girls of the Tamang community who had been sold into prostitution by their sister-in-law and were about to be trafficked into India when they were rescued by the Nepalese authorities. The criminal system reaping rewards from child trafficking often uses those close to the children to lure them into this modern form of sexual enslavement.

53. Many of the children land up in Kathmandu and are then taken across the open border into India and then to Bombay where there is a large market of Nepalese women and girls, particularly of the Tamang community. According to

one appraisal, "5-7,000 girls each year from poor and poorly educated families are sent to India, often by their own families, or at least with their collusion". 21/

54. Estimates of the total number of Nepalese women and girls in prostitution in India vary between tens of thousands to hundreds of thousands, thus indicating the need to monitor the situation more closely to obtain reliable statistics.

55. Another issue raised during the Special Rapporteur's visit was the increasing number of boys lured into prostitution in Kathmandu. Some foreign paedophiles are known to seek to exploit local children. The arrival of refugees from Bhutan poses an additional problem as the children in refugee camps are at times trafficked for child labour and child prostitution.

56. In this context also, the sale and trafficking of children is totally illegal, and is in breach of both the Law on Human Trafficking and the Children's Act. Clearly law enforcement is weak, and there is an extensive criminal system exploiting women and children. The issue of age criteria is also problematic. While the Convention on the Rights of the Child seeks to protect those under 18 years of age, the local laws protect those under 16 years of age. If the local law concerning rape is invoked, then the age criterion for consent is even lower. Consent is immaterial where rape concerns those under 14 years of age. In the opinion of the Special Rapporteur, the highest possible age threshold, preferably that of 18, should be used to protect children from sexual exploitation.

57. The sad plight of children in this area is compounded by the spread of HIV/AIDS. Those returning to their home communities often take the disease home, and it is projected that there will be a phenomenal rise of HIV/AIDS in Nepal in future. This is likely to be aggravated by illiteracy, shyness concerning sex education, and limited availability of precautions, such as condoms.

III. CHILD PORNOGRAPHY

58. During the Special Rapporteur's visit, several sources indicated that child pornography is evident in certain areas. Pornographic materials, such as videos, are at times imported into the country via India. Conversely, some Indian paedophiles are known to take children into India from Nepal for pornographic purposes. The arrival of foreigners from other parts of the world such as Europe and America also points to a potential increase in the use of local children by foreign paedophiles for pornographic purposes.

59. The practice is, of course, against the law, in particular the Children's Act. It is closely linked with the extensive child prostitution problem. However, while the Children's Act prohibits the publication, exhibition and distribution of child pornography, it is less clear on the issue of possession of child pornography.

IV. CONCLUSIONS AND RECOMMENDATIONS

60. The general impression gained from the visit to Nepal is that while a number of new laws have emerged to accord more protection to children, the implementation of these laws is less than satisfactory. The scenario encompasses vestiges of the past, including paternalism, various negative cultural practices and bondage. It is aggravated by an extensive criminal network that is involved in the sale and trafficking of children into neighbouring India. The advent of tourists from other regions of the globe constitutes another threat where it leads to the sexual exploitation of local children. The quality of law enforcement personnel poses a continuing challenge, and this goes hand in hand with the need to nurture a broader community system to protect children. The following recommendations are addressed to both the governmental and non-governmental sectors in Nepal.

General

1. More emphasis should be placed on the issue of prevention through effective anti-poverty strategies, improved information flow, the provision of broad-based education with flexible school hours, community consciousness-raising and mobilization, the satisfaction of basic needs, and the provision of occupational opportunities and alternative forms of employment. The issue of decentralization, equity and social justice, including redistribution of land and freedom for those who are now in bondage, is a major concern. Family and child subsidies are needed to prevent the decline of families.

2. Protection of children from exploitation calls for effective laws, policies and enforcement at the national and local levels. Nepal already has various laws which can be used to protect children: they need to be implemented more effectively. Where there are gaps, such as the lack of a law against debt bondage, new laws are required. The age threshold for protecting children should be set in accordance with the Convention on the Rights of the Child. Effective birth registration is essential to accord better protection and access to the law. Gender discrimination and discrimination against indigenous peoples also need to be countered by the law and by other strategies.

3. The quality of law enforcement personnel needs to be improved. This means more training on children's rights for such personnel, and incentives for good performance. The corrupt parts of such entities need to be identified and penalized.

4. Action against intermediaries in the sale and trafficking of children should be made more effective. Where the intermediaries are the parents or close relatives, counselling and social rehabilitation, as well as sanctions, should be available. The responsibility of the customer, including those who possess child pornography, needs to be highlighted.

5. Improved links between Interpol, the Nepalese police and the Indian police, with the support of SAARC, are needed to identify transnational networks which exploit children. The national police should have a special policy and cell to deal with child exploitation. Exchanges

between border personnel should be fostered. Not only the police but also community leaders and the mass media which can act as a watchdog against child exploitation, should be involved. The cooperation can also extend extradition arrangements and less formal arrangements such as the exchange of data and information.

6. Community groups, including religious leaders, village committees, youth and child groups, etc., should be promoted as part of a community watch programme to monitor child exploitation.

7. Remedial action should be fostered to help children who are exploited. This may include judicial remedies, such as the prosecution of abusers, coupled with legal aid and assistance and socio-medical remedies such as hospices, counselling and other support facilities. In the case of cross-frontier trafficking, proper safeguards are required to ensure the safe return of children.

8. Facilities should be provided on a long-term basis to those with health problems, including HIV/AIDS. These may include medical and community facilities to help the children and their families, as well as measures to protect them against discrimination.

Sale of children

9. Measures should be adopted nationally to implement the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption. Effective monitoring should be set in place to prevent commercialization and trafficking.

10. Existing child labour laws need to be made more specific as to conditions of work and provision for joint action between labour inspectors and other law enforcement personnel such as the police. Children in the informal sector, such as domestic labour, also need to be protected, and the vestiges of debt bondage eradicated. The issue of subcontracting should be studied more closely to mobilize action to counter abuses. The business sector, including employers and trade unions, could enhance child protection by adopting its own code of conduct to protect children. Child care centres should also be established more broadly. On another front, accession to relevant international instruments on child labour is advocated.

11. Greater vigilance and cross-border cooperation are needed to counter the sale of children for organ transplantation. The medical sector should be encouraged to adopt a code of medical ethics along the lines of the World Health Organization's Guiding Principles on Human Organ Transplantation. A new law on the issue may also be required.

12. More initiative, including cross-border cooperation, is required to find missing children. The establishment of a central registry of missing children is recommended.

Child prostitution and pornography

13. An integrated approach is required to tackle the issue of child prostitution. It should bear in mind the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography adopted by the Commission on Human Rights. Assistance is needed for both families and children so as to lift them out of the rut of poverty that drives children into prostitution or that pushes parents to sell their children. Monitoring of parental behaviour, supervision by social service personnel, occupational facilities, family subsidies, access to education and community mobilization are essential to change negative cultural practices.

14. Tracing of children trafficked across the border into other countries should be improved. This goes hand in hand with bilateral and other forms of cooperation between law enforcement personnel and community leaders. Assistance is required to ensure the children's safe return and family/community based rehabilitation.

15. The responsibility of customers, possessors of child pornography and sex tourists should be highlighted, and the issue should be raised in an effective national and local campaign to counter child exploitation.

16. The issue of child exploitation should be taught as part of the educational curriculum. Sex education and safe behaviour should also be broached to prevent children from remaining ignorant and rendering them susceptible to exploitation. The methodology used to convey such information should be sensitive to the local culture.

17. More concrete data on children in difficulties need to be collected. Such data would facilitate an adequate response from national and local programmes.

Notes

1/ UNDP, Development Cooperation: Nepal 1991 (Kathmandu, Jeewan Press, 1991), p. 2. For general reading on the law concerning children in Nepal, see G. Siwakoti, "Nepal: does the law really protect the child?", International Children's Rights Monitor, vol. 10 (1993), Nos. 1-2, p. 12.

2/ UNDP, Development Cooperation: Nepal 1991, see note 1.

3/ UNDP, Human Development Report 1993 (Oxford, Oxford University Press, 1993), p. 137.

4/ Ibid., p. 29.

5/ UNDP, op. cit., note 1.

6/ National Planning Commission, An Outline of Poverty Alleviation Policies and Programmes (Kathmandu, National Planning Commission, 1993), p. 1.

7/ National Planning Commission, Children and Women of Nepal: A Situation Analysis 1992 (Kathmandu, National Planning Commission and UNICEF, 1992), p. 42.

8/ UNDP, op. cit., note 3, p. 22.

9/ O. Sattaur, Child Labour in Nepal (London, Anti-slavery Society and CWIN, 1993), p. 57.

10/ SAARC, Colombo Resolution on Children, 18 September 1992.

11/ National Planning Commission, op. cit., note 6.

12/ O. Sattaur, op. cit., note 9, p. 11.

13/ National Planning Commission, op. cit., note 7, p. xi.

14/ G. Pradhan, "Child workers in the carpet factories of Nepal", Voice of Child Workers (December 1993), pp. 24, 26.

15/ "Street kids in Kathmandu", Voice of Child Workers (December 1989), pp. 12, 14.

16/ O. Sattaur, op. cit., note 9, p. 54.

17/ "Kumari: Living Goddess of Nepal", Voice of Child Workers (March 1991), p. 28.

18/ National Planning Commission, op. cit., note 7, p. 56.

19/ "Deuki and Badi: Cultural disguise for prostitution", Voice of Child Workers (December 1992), p. 60.

20/ Ibid., p. 61.

21/ O. Sattaur, op. cit., note 7, p. 109.

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